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Nos. 92 and 336

In the Supreme Court of the United States

OCTOBER TERM, 1930

No. 92

DEMETRIUS PHILIPPIDES, PETITIONER

v.

BENJAMIN M. DAY, COMMISSIONER OF IMMIGRATION, PORT OF NEW YORK

No. 336

UNITED STATES OF AMERICA EX REL. COSTAS CATECHES, PETITIONER

v.

BENJAMIN M. DAY, COMMISSIONER OF IMMIGRATION

ON WRITS OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SECOND CIRCUIT

BRIEF FOR THE RESPONDENT

INDEX

	Page.
Opinions below	1
Jurisdiction	2
Question presented	2
Statutes and Regulations Involved	3
Statement	3
Argument	4
Conclusion	6

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OPINIONS BELOW

No. 92

The opinion of the Circuit Court of Appeals (R. 21) is reported in 37 F. (2d) 1015. The

opinion of the District Court (R. 17) has not been reported.

No. 336

The *per curiam* order of the Circuit Court of Appeals (R. 18) is reported in 41 F. (2d) 1019. The District Court rendered no opinion.

JURISDICTION

No. 92

The judgment of the Circuit Court of Appeals was entered on February 10, 1930. (R. 22.) The petition for a writ of certiorari was filed on April 25, 1930. (R. 23.) Certiorari was granted on May 26, 1930. (R. 23.)

No. 336

The judgment of the Circuit Court of Appeals was entered on May 12, 1930. (R. 19.) The petition for a writ of certiorari was filed on August 7, 1930. (R. 20.). Certiorari was granted on October 13, 1930. (R. 19.)

The jurisdiction of this Court rests on Section 240 (a) of the Judicial Code, as amended by the Act of February 13, 1925.

QUESTION PRESENTED

Whether an alien who arrived in this country as a seaman after the effective date of the Immigration Act of 1924, and deserted, and who remained here for a longer period than permitted by the regulations of the Department of Labor, promulgated

under that Act, may be deported at any time as provided in that Act, or only within three years after entry.

STATUTES AND REGULATIONS INVOLVED

The statutes and regulations involved are set forth in the Appendix to the brief for the petitioner in *Carr* v. *Zaja*, No. 125, October Term, 1930.

STATEMENT

No. 92

The following facts are shown by the petition for *habeas corpus* and return of the Commissioner of Immigration, who is respondent here.

The petitioner, an alien, arrived in this country in September, 1925, as a seaman. (R. 8.) Immediately upon his entry he deserted the vessel and has since been employed in a restaurant. (R. 9.) At the time of entry he was not in possession of an unexpired immigration visa. (R. 9.) On December 19, 1928, he was arrested on the charge that he had remained in the United States for a longer time than permitted by the 1924 Act and regulations made thereunder. (R. 4, 9.) After a hearing before the immigration authorities, he was ordered deported on this ground. (R. 2.)

The petitioner then sued out a writ of *habeas corpus* in the District Court for the Southern District of New York. (R. 3.) After a hearing, the writ was dismissed. (R. 17.) On appeal the judgment below was affirmed. (R. 22.)

The following facts are shown by the petition for *habeas corpus* and the return of the Commissioner of Immigration, who is respondent here.

The petitioner, an alien, arrived in this country in October, 1925, as a seaman aboard an Italian ship. (R. 3.) He deserted the vessel immediately upon his entry, and has since been engaged in land employment. (R. 5.) On May 8, 1929, he was arrested by the immigration authorities, and accorded a hearing upon the charge that he had remained here longer than permitted by the 1924 Act and the regulations made thereunder. As the result of the hearing he was ordered deported. (R. 5.)

The petitioner thereupon petitioned the United States District Court for the Southern District of New York for a writ of *habeas corpus*, alleging, in substance, that the order of deportation was void because his arrest was not effected within three years from the date of his entry. (R. 3.) After a hearing the writ was dismissed. (R. 15.) That action was affirmed on appeal. (R. 19.)

Argument

These cases present the precise question involved in *Carr* v. *Zaja*, No. 125, October Term, 1930, and the argument presented in the brief for the petitioner filed in that case is adopted here.

In each of the instant cases the brief for the seaman asserts that he landed in violation of the

terms of the Act of 1917 and seeks to base on this assumption a right to avoid deportation. In the view which we take of the matter, this would be immaterial even if it were proved. See pp. 11–12 of brief for petitioner in *Carr* v. *Zaja*, No. 125.

Moreover, we maintain that upon no possible construction of the statutes can a seaman insist upon the procedure outlined in Section 34 of the 1917 Act unless he affirmatively proves that his entry was "contrary to the provisions of this Act."

There is nothing in the record in either case which shows that the petitioner's entry was contrary to those provisions. Testimony or a finding that the seaman "deserted" the ship or that he "left" the ship is too ambiguous to establish this. And the mere entry in the immigration record "Result of Medical examination: * * * not certified" does not prove unlawfulness of entry. The statute does not require the issuance of a certificate to every seaman who passes the medical examination, and in practice certificates are not issued to such seamen. See Section 16 of Immigration Law, Act of 1917 (39 Stat. 874, 885); Rule 6, Subdivision F of Immigration Rules of February 1, 1924; Rule 7, Subdivision F of Immigration Rules of January 1, 1930. The absence of a medical certificate is as consistent with the assumption that the seaman passed the medical examination as it is with the assumption that he avoided it.

CONCLUSION

It is respectfully submitted that the judgments below should be affirmed.

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